

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

JOSHUA THOMAS MILLER, #2120015 §

VS. § CIVIL ACTION NO. 6:21cv020

MARIA PONCE, ET AL. §

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Joshua Miller, a prisoner confined at the Ellis Unit within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 alleging purported violations of his constitutional rights. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Judge Mitchell issued a Report recommending that Plaintiff's lawsuit be dismissed without prejudice for the failure to comply with an order of the Court and to prosecute his own case. Docket No. 59. She further recommended that the statute of limitations be suspended for a period of sixty days from the date of Final Judgment. *See Campbell v. Wilkinson*, 988 F.3d 798, 801 n.1 (5th Cir. 2021). Specifically, Judge Mitchell found that Plaintiff failed to file an amended complaint as directed after Plaintiff's claims were severed. Plaintiff filed timely objections to the Report. Docket No. 60.

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation.

28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten days to fourteen days).

Plaintiff’s objections are overruled. Plaintiff maintains that he was unable to file an amended complaint because he was “temporarily transferred” to different prison units on several occasions in 2022 and 2023. Plaintiff’s transfers did not preclude him from filing an amended complaint or even a motion for an extension of time—specifically given his ability to file objections.

Plaintiff further explains that he returned to his “unit of assignment” after each transfer, with the most recent return in February 2023. But, to date, he still has neither filed an amended complaint nor sought an extension of time to do so. His failure to file an amended complaint after such a significant lapse of time—coupled with his failure to communicate with the Court—confirm that the Magistrate Judge’s recommendation is appropriate.


Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 59) as the findings of this Court. Therefore, it is

**ORDERED** that Plaintiff's objections (Docket No. 60) are **OVERRULED**. Plaintiff's lawsuit is **DISMISSED** without prejudice for the failure to comply with an order of the Court and to prosecute his case. Finally, it is

**ORDERED** that the statute of limitations in this case is hereby **SUSPENDED** for a period of sixty days from the date of Final Judgment.

**Signed this**

**Oct 8, 2023**

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE